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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JAMES CARRANZA,

Defendant and Appellant.

H041986

(Monterey County

Super. Ct. No. SS143016A)

Defendant Michael James Carranza pleaded no contest to possessing a controlled substance (methamphetamine) while armed (Health & Saf. Code, § 11370.1, subd. (a)), and was placed on felony probation. Defendant challenges as unreasonable a condition of his probation prohibiting him from “knowingly possess[ing] or hav[ing] custody or control of female lingerie.” For the reasons stated here, we will affirm the judgment.

**I. TRIAL COURT PROCEEDINGS**

According to defendant’s probation report, a witness reported to the Salinas Police Department that on four occasions the witness had encountered a man in the laundry room at the witness’s apartment complex with laundry scattered on the floor. When confronted on the most recent occasion, the man fled on a mountain bike. The witness reported that on more than one of those occasions, underwear belonging to his wife was missing from the laundry. The witness later identified defendant as the person he had seen in the laundry room.

That same night, a Salinas police officer noticed defendant riding a mountain bike without lights and reflectors somewhat near the apartment complex. The officer stopped defendant. During a weapons search, defendant volunteered that he had a loaded handgun in his backpack. In addition to the handgun, the officer found 14 items of women's underwear in the backpack. The officer also found two bindles containing a total of one-half gram of methamphetamine in one of defendant's pockets.

Defendant was charged with, and eventually pleaded no contest to, one count of possessing a controlled substance (methamphetamine) while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a)). Defendant signed and initialed multiple parts of a waiver of rights form when entering his plea, including a waiver of appellate rights as well as a *Harvey*<sup>1</sup> waiver that states: "The sentencing judge may consider the entire factual background of the case, including any unfiled, dismissed, or stricken charges or allegations or cases when granting probation, ordering restitution, or imposing sentence." Defendant answered "Yes" when the trial court asked him whether he had read and understood each of the initialed paragraphs on the plea form.

The trial court suspended imposition of sentence and placed defendant on three years formal probation. At the sentencing hearing, the prosecutor requested a condition prohibiting defendant from possessing women's underwear. Defense counsel argued (incorrectly) that there had been no *Harvey* waiver and also argued that the underwear condition was "not relevant to the charge, which is gun and drugs." The trial court granted the prosecutor's request, ordering defendant "not to knowingly possess or have in your custody or control any female lingerie."

## **II. DISCUSSION**

The parties agree that defendant's general waiver of his right to appeal did not waive his right to appeal the probation condition he challenges because he did not know

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<sup>1</sup> *People v. Harvey* (1979) 25 Cal.3d 754, 758.

about that condition when signing the waiver. We will therefore focus on defendant's challenge to the reasonableness of the probation condition prohibiting possession of women's underwear.

Trial courts have broad discretion when deciding which conditions of probation to impose. (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).) "The court may impose ... reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer ... ." (Pen. Code, § 1203.1, subd. (j).) "[C]onditions of probation 'are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large.'" (*People v. Olguin* (2008) 45 Cal.4th 375, 380 (*Olguin*).) A "condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Lent*, at p. 486.) We review the reasonableness of a probation condition imposed by the trial court for an abuse of discretion. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120–1121.)

Defendant argues that the prohibition on possessing women's underwear was not reasonably related to his methamphetamine possession conviction. He contends that allegations in the probation report about him stealing women's underwear are irrelevant because he was never charged or convicted of any crime related to that alleged theft. But defendant's opening brief fails to disclose that defendant agreed to a *Harvey* waiver in the trial court, which expressly authorized the trial judge to "consider the entire factual background of the case, including any unfiled, dismissed, or stricken charges or allegations or cases when granting probation, ordering restitution, or imposing sentence."

The trial court was thus presented with a defendant who had been identified by an eyewitness as the person seen inside a laundry room on four occasions with laundry

strewn about the floor. The eyewitness told police that his wife's underwear had gone missing on multiple occasions after the witness saw defendant in the laundry room. When defendant was arrested, an officer found 14 pieces of women's underwear in his backpack. Those facts supported an inference that defendant was the person who had been stealing women's underwear from the laundry room. The trial court could reasonably conclude that prohibiting defendant from possessing women's underwear was a proper way to increase the likelihood of reformation and rehabilitation during probation.

Defendant argues that even if the court could consider the theft allegations, the probation condition is not reasonably related to preventing future criminality because mere possession of women's underwear is not a crime. But *Lent* made clear that probation conditions can appropriately forbid "conduct which is not itself criminal" so long as the conduct is "reasonably related to future criminality." (*Lent, supra*, 15 Cal.3d at p. 486.) While the condition the trial court imposed prohibits a broader category of conduct than merely theft of women's underwear, there is no limitation in the law that probation conditions be the least restrictive possible.

Probation is a privilege, not a right. (*Olguin, supra*, 45 Cal.4th at p. 384.) To take advantage of that privilege, a defendant must accept reasonable limitations on his or her liberty. Given that the factual background of defendant's case supported an inference that he had stolen women's underwear on multiple occasions, the trial court could reasonably conclude that prohibiting defendant's access to women's underwear was related to his success on probation. We find no abuse of discretion.

### **III. DISPOSITION**

The judgment is affirmed.

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Grover, J.

**WE CONCUR:**

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Rushing, P.J.

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Premo, J.